

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WELLS FARGO BANK, N.A., a national)
banking association,) FILED: AUGUST 25, 2008
) 08CV4829
Plaintiff,) JUDGE CASTILLO
) No. MAGISTRATE JUDGE DENLOW
-vs-) YM
)
FIRST CHOICE DRYWALL, INC., an)
Illinois corporation)
)
Defendants.)

COMPLAINT

Plaintiff, Wells Fargo Bank, N.A., by its undersigned attorneys, and as its Complaint against the Defendant, alleges and states that:

Parties

1. The Plaintiff, Wells Fargo Bank, N.A., is a national banking association with its principal place of business located at 100 East Wisconsin Avenue, Suite 1400, Milwaukee, WI 53202.

2. Defendant, First Choice Drywall, Inc., ("First Choice") is an Illinois corporation with a principal place of business located, upon information and belief, at 5620 West 120th Street, Alsip, IL 60803.

Jurisdiction and Venue

3. This court has jurisdiction of the subject matter of this action under 28 U.S.C. §1332(a)(1), in that the Plaintiff and Defendant are citizens of different states and, as more fully described below, the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00

4. Venue is proper in this Court under 28 U.S.C. §1391(a)(1) in that the Defendant does business in this District.

Background Allegations

5. On or about October 19, 2007, the Milwaukee County, Wisconsin, Circuit Court entered an Order for Immediate Possession of Collateral in the case of *Wells Fargo Bank, N.A. v. Great Lakes Building Materials, Inc. et al.* case number 07-CV-12651 (the “Order”). A copy of the Order is attached hereto and incorporated by reference as Exhibit “A”.

6. Pursuant to the terms of the Order, Plaintiff was granted the right to immediate possession of certain collateral pledged to it by Great Lakes Building Materials, Inc. (“Great Lakes”) including, but not limited to, accounts.

7. By virtue of the Order, Plaintiff is entitled to collect the accounts receivable of Great Lakes, including, but not limited to the receivable at issue in this lawsuit.

COUNT I: BREACH OF CONTRACT

8. Plaintiff hereby realleges and restates paragraphs 1 through 7 above as if fully set forth at length herein.

9. Upon information and belief, Great Lakes provided to First Choice certain building materials on terms agreed upon by the parties and as described on the Statement attached hereto as Exhibit “B”.

10. Great Lakes performed all of its obligations under the terms of the parties’ agreement.

11. First Choice has failed to comply with the terms of the parties' agreement by failing to remit payment full to Great Lakes for the goods and services provided by Great Lakes to First Choice.

12. There is currently due and owing to Great Lakes from First Choice the principal sum of \$125,101.68.

WHEREFORE, Plaintiff Wells Fargo Bank, N.A. respectfully requests judgment against Defendant First Choice Drywall, Inc., as follows:

- (a) Awarding Plaintiff compensatory damages in the amount of \$114,518.10, with prejudgment interest on said amount from the date of the applicable invoices through the date of judgment;
- (b) Awarding interest on such judgment from the date of the judgment until paid;
- (c) Awarding Plaintiff its costs of suit and attorneys' fees to the extent permitted under applicable law; and
- (d) Granting Plaintiff such other and further relief as justice and equity may require.

COUNT II: ACCOUNT STATED

13. Plaintiff hereby realleges and restates paragraphs 1 through 13 above as if fully set forth at length herein.

14. Between May 25, 2007 and October 17, 2007, First Choice ordered and Plaintiff shipped to First Choice, construction materials, as evidenced by the Statement attached hereto as Exhibit B.

15. Despite Plaintiff's repeated demands for payment of the invoices, First Choice has failed and refused to pay the sum of \$114,518.10 for such materials sold and delivered to First Choice at its special instance and request.

16. On information and belief, First Choice did not timely contest or question any part of said invoices.

17. Great Lakes has substantially performed all of its obligations to First Choice with respect to the subject goods.

18. First Choice's failure to pay has damaged Plaintiff in the sum of \$114,518.10, together with prejudgment interest thereon.

19. First Choice's failure to pay for the foregoing goods and its failure to timely dispute the amounts claimed due at the time they were billed constitutes an account stated.

WHEREFORE, Plaintiff Wells Fargo Bank, N.A. respectfully requests judgment against Defendant First Choice Drywall, Inc., as follows:

- (a) Awarding Plaintiff compensatory damages in the amount of \$114,518.10, with prejudgment interest on said amount from the date of the applicable invoices through the date of judgment;
- (b) Awarding interest on such judgment from the date of the judgment until paid;
- (c) Awarding Plaintiff its costs of suit and attorneys' fees to the extent permitted under applicable law; and
- (d) Granting Plaintiff such other and further relief as justice and equity may require.

WELLS FARGO BANK, N.A.

By: //s// Marc W. O'Brien
One of its attorneys

Marc W. O'Brien (ARDC#6188500)
David Shapiro.
Bronson & Kahn LLC
150 North Wacker Drive
Suite 1400
Chicago, Illinois 60606

EXHIBIT A

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

WELLS FARGO BANK, N. A.,
acting through its Wells Fargo Business
Credit operating division
100 E. Wisconsin Avenue, Suite 1400
Milwaukee, WI 53202

]

Plaintiff,

vs.

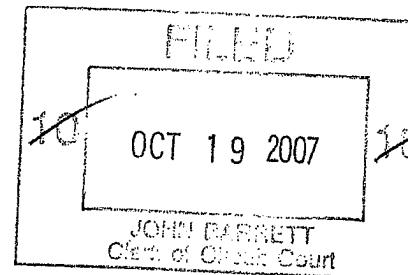
GREAT LAKES BUILDING MATERIALS, INC.,
1960 Bucktail Lane
Sugar Grove, IL 60554

RICHARD CATRAMBONE
10756 Wentworth Drive
Naperville, IL 60564-8132

SUMMIT TRUCK LEASING
10756 Wentworth Drive
Naperville, IL 60564-8132

LORAINE CATRAMBONE
10756 Wentworth Drive
Naperville, IL 60564-8132

Defendants.



ORDER FOR IMMEDIATE POSSESSION OF COLLATERAL

The above entitled matter having come before the Court pursuant to an Motion for Immediate Possession of Collateral of Wells Fargo Bank, N.A. ("WFBC") dated October ___, 2007; the Court having considered the accompanying Affidavit of Brian T. Sprink, Vice President and the files and records herein; and being first duly advised in the premises;

NOW, THEREFORE, on Motion of Howard, Solocheck & Weber, S.C. and pursuant to Sections 409.601 – 409.628, Stats. and Chapter 810, Stats.

IT IS HEREBY ORDERED that:

That WFBC is entitled to the following collateral: the Collateral as described in the Credit and Security Agreement Exhibit 1 attached to Plaintiff's Complaint including but not limited to all of its accounts, contract rights, instruments, chattel paper, inventory, equipment, general intangibles, and all other property specifically named, whether then owned or thereafter acquired.

The collateral is located at 1960 Bucktail Lane, Sugar Grove, IL 60554 and 7701 Blivin Street, Spring Grove, IL, 60081, and with third parties.

IT IS FURTHER ORDERED that Great Lakes Building Materials, Inc. ("Great Lakes") shall not dispose of or use any of the Collateral of WFBC including but not limited to the Accounts, proceeds from Accounts and cash (the "Funds"). Third parties holding or controlling the Collateral of WFBC and the Funds shall submit the same to WFBC or hold any Funds and Collateral pending further Order of this Court.

IT IS FURTHER ORDERED that if necessary the Sheriff, US Marshall or other appropriate officer or official of Kane County, Illinois and/or McHenry County shall take the property described in the Complaint from the Defendant Great Lakes Building Materials, Inc. or such persons as are acting on behalf of, in concert with, or under the control of Great Lakes Building Materials, Inc. and deliver possession thereof to WFBC, all without bond or other indemnity.

Dated at Milwaukee, Wisconsin this 19th day of October, 2007.

BY THE COURT:

TIMOTHY G. DUGAN

Honorable Timothy G. Dugan
Circuit Court Judge

EXHIBIT B

Great Lakes Building Materials

Statement

P.O. Box 1339
 Sugar Grove, IL 60554-1339
 Phone: (630)-466-4143

Statement Date: 06/22/08

Sold-To: 1st Choice Drywall
 5620 W 120th Street
 Alsip, IL 60803

Page 1 of 3

ACCT#	1CD	PHONE#	(708) 388-5353	FAX#	(708) 388-5353		
INVOICE DATE	INVOICE NUMBER	TYPE	GROSS AMOUNT	DISCOUNT DATE	DISCOUNT AMOUNT	PAYMENT	NET AMOUNT
Ship-to: 1st DeKalb, IL GLBM 09/05/07 09/18/07 10/05/07 10/12/07	Choice Drywall, Devonaire Farms 00028636-002 ✓ 00028724-001 ✓ 00028852-002 ✓ 00028893-001 ✓	INVOICE	2332.29 2637.87 2653.80 2630.64 -----			0.00 0.00 0.00 0.00	2332.29 2637.87 2653.80 2630.64 -----
	SUB-TOTAL		10254.60				10254.60
Ship-to: 1st Joliet, IL GLBM 08/30/07 09/28/07	Choice Drywall, Silverleaf 00028603-001 ✓ 00028800-001 ✓	INVOICE	2599.29 2602.60 -----			0.00 0.00	2599.29 2602.60 -----
	SUB-TOTAL		5201.89				5201.89
Ship-to: 1st Hoffman Estates, IL GLBM 08/16/07 08/16/07 08/31/07 09/11/07 09/14/07 09/20/07 09/24/07 09/27/07 10/02/07 10/12/07 10/17/07 SPRINGGR 06/28/07 09/07/07 09/11/07 10/10/07	Choice Drywall, Beacon Pointe 00028503-001 00028504-001 00028592-002 ✓ 00028693-001 ✓ 00028707-002 ✓ 00028739-001 ✓ 00028772-002 ✓ 00028789-002 ✓ 00028830-001 ✓ 00028894-003 ✓ 00028933-002 ✓ 00099692-001 ✓ 00100091-001 ✓ 00100105-001 ✓ 00100259-001 ✓	CM CM INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE INVOICE	-538.56 -436.80 4389.31 405.85 3034.05 4660.67 3101.82 4497.27 3316.93 3273.05 3193.12 3264.98 3992.50 3248.56 3176.46 -----	08/16/07 08/16/07		0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 3174.98 0.00 0.00 0.00	-538.56 -436.80 4389.31 405.85 3034.05 4660.67 3101.82 4497.27 3316.93 3273.05 3193.12 90.00 3992.50 3248.56 3176.46
	SUB-TOTAL		42579.21				3174.98 ----- 39404.23

Great Lakes Building Materials

Statement

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ACCT#:	1CD	PHONE#:	(708) 388-5353	FAX#:	(708) 388-5355		
INVOICE DATE	INVOICE NUMBER	TYPE	GROSS AMOUNT	DISCOUNT DATE	DISCOUNT AMOUNT	PAYMENT	NET AMOUNT
Ship-to: 1st Choice Drywall, Plaza on New York Aurora, IL GLBM							
08/30/07	00028593-002 ✓	INVOICE	2675.85			0.00	2675.85
08/30/07	00028622-001 ✓	INVOICE	142.82			0.00	142.82
09/04/07	00028630-001 ✓	INVOICE	3001.22			0.00	3001.22
09/07/07	00028652-002 ✓	INVOICE	2800.04			0.00	2800.04
09/07/07	00028656-002 ✓	INVOICE	2736.66			0.00	2736.66
09/11/07	00028675-002 ✓	INVOICE	2625.14			0.00	2625.14
09/13/07	00028687-001 ✓	INVOICE	2596.76			0.00	2596.76
09/13/07	00028701-001 ✓	INVOICE	363.79			0.00	363.79
09/14/07	00028709-004 ✓	INVOICE	2532.24			0.00	2532.24
09/18/07	00028725-001 ✓	INVOICE	2590.69			0.00	2590.69
09/20/07	00028738-001 ✓	INVOICE	2705.19			0.00	2705.19
09/21/07	00028743-001 ✓	INVOICE	2845.27			0.00	2845.27
09/20/07	00028751-001 ✓	INVOICE	363.79			0.00	363.79
09/25/07	00028779-002 ✓	INVOICE	2887.80			0.00	2887.80
09/26/07	00028781-001 ✓	INVOICE	2705.19			0.00	2705.19
09/27/07	00028790-001 ✓	INVOICE	2652.45			0.00	2652.45
09/27/07	00028809-002 ✓	INVOICE	258.17			0.00	258.17
10/01/07	00028828-003 ✓	INVOICE	2692.90			0.00	2692.90
10/03/07	00028833-002 ✓	INVOICE	2913.02			0.00	2913.02
10/04/07	00028842-003 ✓	INVOICE	2586.04			0.00	2586.04
10/03/07	00028850-001 ✓	INVOICE	199.49			0.00	199.49
10/04/07	00028856-001 ✓	INVOICE	445.93			0.00	445.93
10/09/07	00028879-002 ✓	INVOICE	3021.29			0.00	3021.29
10/11/07	00028884-003 ✓	INVOICE	2763.11			0.00	2763.11
10/15/07	00028924-002 ✓	INVOICE	2523.68			0.00	2523.68
10/15/07	00028927-001 ✓	INVOICE	398.99			0.00	398.99
10/17/07	00028932-001 ✓	INVOICE	2779.70			0.00	2779.70
10/19/07	00028942-002 ✓	INVOICE	2696.61			0.00	2696.61
10/19/07	00028963-001 ✓	INVOICE	153.55			0.00	153.55
	SUB-TOTAL		59657.38				59657.38

Great Lakes Building Materials

P.O. Box 1339
Sugar Grove, IL 60554-1339
Phone: (630)-466-4143

Statement Date: 06/22/08

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Alsip, IL 60803

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ACCT# 1CD

PHONE# (708) 388-5353

FAX# (708) 388-5356

INVOICE DATE	INVOICE NUMBER	TYPE	GROSS AMOUNT	DISCOUNT DATE	DISCOUNT AMOUNT	PAYMENT	NET AMOUNT
<p>THERE WILL BE A 10% RESTOCKING FEE ON ALL RETURNED MATERIALS.</p> <p>If invoices not paid within 60 days, Great Lakes Building Materials, Inc. may place a lien on subject property. Purchaser is then responsible for any and all costs and reasonable attorney's fees for GLBM, Inc. to file and enforce the lien and collection of the debt.</p>							

GLBM

CURRENT AMT	31-60 DAYS	61-90 DAYS	91-120 DAYS	Over 120 DAYS	Gross Amt Due
0.00	0.00	0.00	0.00	114,518.10	114,518.10